

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 27 9 14 AM '05
FCC 05M-45
04716

In the Matter of)	EB Docket No. 04-381
)	
Florida Cable Telecommunications)	
Association, Inc.; Comcast Cablevision of)	
Panama City, Inc.; Mediacom Southeast,)	
L.L.C.; and Cox Communications Gulf,)	
L.L.C.,)	
)	
Complainants,)	
)	
v.)	
)	
Gulf Power Company,)	
)	
Respondent.)	

ORDER

Issued: September 23, 2005

Released: September 26, 2005

Gulf Power has the burden of proceeding with the introduction of evidence and the burden of proving its entitlement to receive compensation above the Commission's Cable Formula.¹ As part of its burden of proof, Gulf Power must offer evidence of specific poles that are at "full capacity."

[Gulf Power] must show with regard to each pole that
(1) the pole is at full capacity ---.

Hearing Designation Order, EB Docket No. 04-381 (DA 04-3048) ("HDO") at Paras. 3, 8.

In December 2004, prior to this hearing's designation, Gulf Power filed a Description of Evidence referencing "core evidence" that Gulf Power considers sufficient to prove its case for damages (costs in excess of Cable Formula). Gulf Power represents that it has made a substantial production of documents and answers to interrogatories on subjects referred to in its Description of Evidence.

¹ Cable Formula calculates the allowable pole attachment rate that a specific utility may charge a cable operator. See *Amendment of Commission Rules and Policies Governing Pole Attachments*, 16 F.C.C. Rcd 12103, 12110 (2001).

On August 31, 2005, a pleading styled "Gulf Power's Itemization of Evidence Provided that is Referred to in the Description of Evidence" was filed. Certain of the itemized evidence was disclosed and produced for Complainants in a document examination/production that was conducted on May 27-28, 2005. Such evidence included, *inter alia*, make-ready documents, applications and permits for build-outs, charts identifying geographic overlap, and distribution planning studies.²

On September 30, 2005, Gulf Power will submit a Preliminary Report on Pole Survey. *Order* FCC 05M-38, released August 5, 2005.

Illustrations of Full Capacity Poles

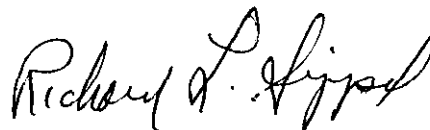
Gulf Power should be capable now of illustrating poles that are at "full capacity." Accordingly, to facilitate hearing preparation, Gulf Power should select a minimum of three (3) poles, which have CATV cable attachments and which Gulf Power can identify as being at "full capacity".

The proffer(s), which will be non-binding, must include at a minimum, photographs of pole, schematic renderings of attachments, identity and copies of relevant documents, and an analysis of each described pole under *APCo* and the *Gulf Power Order*.³

Such non-binding proffers of full pole capacity SHALL BE FILED BY **October 7, 2005**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁴



Richard L. Sippel
Chief Administrative Law Judge

² There were two requests filed by Complainants for compulsory discovery. See *Discovery Order*, FCC 05M-38 (released August 5, 2005), and *Second Discovery Order* FCC 05M-44 (released September 22, 2005).

³ *APCo v. FCC*, 311 F.3rd 1357 (11th Cir. 2002). *Gulf Power Order*, 18 FCC Rcd 9599 (2003).

⁴ Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.